

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

IN THE MATTER OF THE LIQUIDATION OF  
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.

**LIQUIDATOR'S MOTION TO ACCELERATE PAYMENT OF CLASS FIVE CLAIMS**

Paula T. Rogers, Commissioner of Insurance of the State of New Hampshire, as duly appointed Liquidator of Tufts Health Plan of New England, Inc. (the "Liquidator" and "TNE", respectively), pursuant to NH RSA 402-C:44, moves for authority to accelerate payment of "Allowed Class Five Claims" within the meaning of the Liquidator's Plan of Liquidation (the "Plan of Liquidation" or the "Plan"). In so doing, the Liquidator hopes to expedite the administration of this estate and the ultimate conclusion of this case, as well as expediting the payment of Allowed Claims to TNE's creditors. In support of her motion, the Liquidator states as follows:

1. On December 20, 1999, the Liquidator, then acting as Rehabilitator of TNE, filed her Petition for Liquidation of TNE, which was granted by this court on January 4, 2000. From and after that date, the Liquidator has continued under the supervision and with the approval of this court to exercise and discharge her statutory rights and responsibilities as Liquidator, including the marshalling of assets of TNE's estate, and administering the estate for the benefit of TNE's members, subscribers, policyholders and creditors.

2. On November 22, 2000, the Liquidator filed her Plan of Liquidation, along with a Funding and Settlement Agreement (the "Funding and Settlement Agreement"), which together represent a comprehensive framework for the administration of TNE's estate, and the allowance,

adjudication and payment of claims against TNE.<sup>1</sup> This court approved the Plan and the Funding and Settlement Agreement by order dated December 28, 2000 (the “Approval Order”). No appeals were taken from the Approval Order, which became a Final Order on January 29, 2001.

3. An integral feature of the Plan of Liquidation and the Funding and Settlement Agreement is the unconditional guaranty by Tufts Associated Health Maintenance Organization, Inc. (“TAHMO”) and certain affiliates (collectively “THP”) of payment of all Allowed Claims in Classes One through Five (the “THP Guaranty”). The THP Guaranty is secured by a \$3.5 million Deposit, which the Liquidator may draw upon to pay Allowed Claims under certain conditions set forth in Section 2.1 of the Funding and Settlement Agreement.<sup>2</sup> Thus, in addition to the estate’s current assets and the Deposit, the THP Guaranty remains available to fund the payment of any deficiency that might result from the administration, adjudication and payment of Allowed Claims.

4. Section 2.2 of the Plan, and paragraph 4 of the Approval Order, provide for the payment of Allowed Claims in the order and with the priority provided in our RSA 402-C:44, which in turn provides, in pertinent part:

**Order of Distribution.** The order of distribution of claims from the insurer’s estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under paragraphs II, V and VI . . . shall be deducted from the claim. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

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<sup>1</sup> All capitalized terms are intended to have the same meaning as defined in the Plan of Liquidation and the Funding and Settlement Agreement, unless specifically otherwise defined. None of the summaries or characterizations of the terms of the Plan or the Funding and Settlement Agreement contained in this motion are intended to modify any provision of the Plan or the Funding and Settlement Agreement as approved by this court.

<sup>2</sup> By its terms, the Deposit (or such portion thereof as may then be remaining) is returnable to TAHMO eighteen months after the Deposit was funded, *i.e.* on August 5, 2002.

402-C:22 goes on to establish ten Roman-numeraled classes of claims, which the Plan tracks in Arabic numbers. The first five classes, which correspond to Classes One through Five in the Plan and which are benefited by the THP Guaranty, are:

Class One:	Administration Costs
Class Two:	Policy Related Claims
Class Three:	Claims of the Federal Government
Class Four:	Wages
Class Five:	Residual Classification

For the reasons set forth below, the Liquidator believes that adequate funds are available to warrant her commencing to administer, adjudicate and pay Claims in Class Five without first having paid all Allowed Claims in Classes One through Four.

**Class One: Administration Costs.**

5. Class One is, by its nature, an exception to the hierarchy of claims classes in 402-C:44, since neither the statute nor the Plan contemplate that all Class One Claims must be paid or reserved for prior to the payment of Claims in junior classes. For example, Class One includes the Liquidator's costs and expenses in administering TNE's estate, which will continue to be incurred and paid throughout the Liquidation Proceeding, notwithstanding the ongoing payment of Allowed Claims in Classes Two through Five. Class One also includes Claims for payment for covered services rendered by contracted providers during the mandatory thirty-day period of continued insurance coverage beyond the date of the liquidation order required by RSA 402-C:22. The Liquidator has paid all Allowed Claims for such covered services.

6. The Funding and Settlement Agreement includes, as Exhibit D thereto, an estimated administrative expense budget from the commencement of the Liquidation Proceeding through September 30, 2001, with monthly estimates beginning October 1, 2000. The overall projected expenses for the entire period total \$2,535,119. The actual monthly expenses for the

period of October 1, 2000 through July 31, 2001 are less than those projected. The Liquidator and TAHMO have already begun discussions concerning administration costs expected to be incurred through the Conclusion of Services and are currently optimistic that the approximately \$1,004,000 of budgeted funds for administration costs in Exhibit D which remain unspent will be sufficient to pay Class One Claims.

**Class Two: Policy Related Claims.**

7. Class Two mainly includes Claims held by medical service providers and TNE policyholders. Proofs of Claim with an aggregate "face" value totaling approximately \$71,869,000 were timely filed and appropriately classified within this class. As of July 31, 2001, over 2,620 Class Two Claims filed in the face amount of approximately \$47,144,000 had been settled or otherwise adjudicated under the Plan, for a total payment to the holders of those claims of approximately \$29,881,000. Included in this group of Claims was the Claim filed by Bath Iron Works ("BIW") in the original amount of \$21,378,000, which was settled for a net distribution to BIW of \$14,000,000.

8. There are approximately 3,500 remaining claims in Class Two, filed in the face amount of approximately \$24,725,000, in the process of being administered and adjudicated. The Liquidator expects that, based on the experience of the previously adjudicated Class Two Claims, these remaining Claims will also be allowed in an amount substantially less than originally filed.

9. Included within the remaining Class Two claims are approximately 70 Claims filed in unliquidated amounts, which have also yet to be adjudicated. A contingent and unliquidated claim was also filed by the United States Department of Labor.<sup>3</sup> The Liquidator

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<sup>3</sup> A copy of the Department of Labor's Proof of Claim is attached hereto as Exhibit A.

and her agents have since met with representatives of the Department of Labor, and provided to them information that they requested concerning claims filed against TNE by certain of its former subscribers. The Department of Labor's inquiry appears to relate to determining whether persons who may have fiduciary responsibilities under ERISA-qualified benefit plans that included TNE policies proceeded to assert Class Two Claims against the TNE estate where appropriate. While the Liquidator remains uncertain as to the precise status of the Department of Labor's Claim, she believes that a reserve for Class Two Claims should not be required for purposes of this motion.

10. To the best of her present ability to so determine, the amount on TNE's books and records corresponding to all of these unliquidated Claims is approximately \$490,000, though the merits of those Claims remain subject to the Liquidator's review, evaluation, administration and adjudication. As stated above, the Liquidator believes that based on the Claims administration and adjudication results to date, the amount allowable and payable for the remaining Class Two Claims should be substantially less than their face amount. Thus, even hypothesizing that all remaining Class 2 Claims are allowed in their full face amount; that the approximately 70 unliquidated Claims are allowed in the amounts shown in TNE's books and records; and that no allowable amendments to those Claims are made, the remaining Class Two Claims would total \$25,215,000.

11. In addition, the Liquidator has already adjudicated and denied 117 Claims (in the aggregate amount of \$271,000) as having been untimely filed without good cause under RSA 402-C:37. Notices of Determination of the disallowance of those Claims have already been sent to the claimants. As of the date hereof, only ten of those claimants timely filed objections to their Notices of Determination within the sixty-day period required by RSA 402-C:41 (I).

However, for purposes of this motion only, even assuming all of the untimely Claims filed without good cause and disallowed by the Liquidator were readjudicated as Allowed Claims (without regard for whatever substantive defenses may exist as to those Claims), the amount of Class 2 Claims would only increase by \$271,000, or slightly over one percent.

**Class Three: Claims of the Federal Government**

12. No Proofs of Claim were filed against TNE by any agency of the federal government, apart from the Proof of Claim filed by the Department of Labor dealt with above. The Liquidator therefore believes that a reserve for the Class Three Claim should not be required for purposes of this motion.

**Class Four: Wage Claims**

13. TNE historically had no employees. All of its functions were carried out pursuant to contractual arrangements with one or more of the THP entities. There are no wage claims filed against TNE, and none anticipated. No reserve for Class Four Claims is necessary.

**Class Five: Residual Claims**

14. Class Five consists of general Claims against TNE, including breach of contract Claims (other than breach of TNE policy Claims); brokerage commissions; vendor Claims, and the like. The Liquidator received 411 timely filed Proofs of Claim properly classifiable in Class Five. Four of those Proofs of Claim, filed in the face amount of \$10.6 million by certain THP affiliates, are Allowed Claims under the Plan,<sup>4</sup> but are subordinated to the payment of all other Allowed Claims in Classes One through Five. Thus, with TAHMO's consent and for purposes of this motion, the Liquidator need not reserve for payment of those subordinated Allowed

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<sup>4</sup> The THP Allowed Claims consist of \$4,183,358 (plus an additional amount accruing from June 30, 2000 through the Conclusion of Services) in Class 1, and \$6,440,972 in Class 5. *See* Plan Section 1.21; Funding and Settlement Agreement Section 1.19

Claims. The remaining timely filed Class Five Claims are in the face amount of approximately \$8,844,000, with an additional seventeen Proofs of Claim showing unliquidated or “unknown” amounts. The Liquidator has not yet administered those seventeen unliquidated Claims, and (as with all unadministered and unadjudicated Claims) reserves her right to do so. The seventeen unliquidated Proofs of Claim correspond to approximately \$71,800 on TNE’s books and records, and are rounded here to \$72,000. Thus, for purposes of this motion only, the Liquidator estimates remaining Class Five Claims of \$8,844,000, plus an additional \$72,000 in unliquidated Proof of Claim, for a total of \$8,916,000.

### **Class Summary**

15. The amount of unadjudicated Class 2 and Class 5 Claims, along with currently projected Class 1 administration costs, totals approximately \$35,135,000, summarized as follows:

<u>Claims Class</u>	<u>Hypothetical Exposure</u>
Class 1	\$ 1,004,000
Remaining Class 2 (face amount)	24,725,000
Unliquidated Class 2	490,000
Class 5 (non-subordinated)	<u>8,916,000</u>
Total	\$35,135,000

16. The Liquidator currently estimates the estate’s assets and other available cash at July 31, 2001, at approximately \$24,207,000, including the Deposit. They include:

Cash and Investments	\$18,025,000
Miscellaneous Recoveries	353,000
Providers Settlement Receivables	857,000
Rhode Island Special Deposits	1,372,000
Anticipated Investment Income	100,000
TAHMO Deposit	<u>3,500,000</u>
Total	\$24,207,000

17. Based upon her claims payment experience in this case the Liquidator believes that the remaining Class Two and Class Five Claims will be settled or adjudicated in amounts substantially less than their face amount. If the remaining Claims are paid at or below the approximate percentage rates at which Claims have been paid to date by the TNE estate (or where applicable, at the amount at which they have already been compromised subject to court approval), the Liquidator may not have to draw down the Deposit significantly, or perhaps at all, to satisfy all Allowed Claims. Moreover, even in a “worst case” scenario in which the Liquidator paid 100% of the face amount of the remaining Claims, the Liquidator believes that the THP Guaranty presently provides sufficient protection for all of the creditors of this estate to warrant the anticipated distribution to the holders of Allowed Claims in Classes One Through Five. The Liquidator has consulted with TAHMO, as well as with Commissioner Linda L. Ruthardt, Commissioner of the Department of Insurance for the Commonwealth of Massachusetts, TAHMO’s primary regulator. Based upon those consultations and the information provided to her as of the date hereof, the Liquidator believes that if TAHMO were called upon to satisfy the THP Guaranty, TAHMO would have the current financial capability to do so. Summary financial information provided by TAHMO to the Liquidator for purposes of this motion is attached hereto as Exhibit B. Correspondence from Commissioner Ruthardt provided to the Liquidator in connection with this motion is attached hereto as Exhibit C.

18. The Liquidator believes, under the circumstances of this case, and based on the assumptions herein stated, that the TNE estate presently has adequate sources of funding for the payment of Allowed Class Five Claims without first having paid all Allowed Claims in Classes senior to Class Five in full. Acceleration of payment of Class Five Claims also promotes the efficient administration of TNE’s estate. The vast majority of the Claims in Class Five are for



unpaid brokerage commissions or other breach of contract Claims that, by their nature, are more likely to be susceptible to quick resolution than some of the more complex policy-related Claims within Class Two. Allowing the Liquidator to adjudicate and pay Class Five Claims will further the speedy administration of this estate for the benefit of all of its creditors, and prevent unnecessary prejudice to the holders of either undisputed or easily resolved Class Five Claims without requiring them to first await the final resolution of all of the Class Two policy-related claims. The Liquidator believes that reaching the Conclusion of Services more quickly should also reduce the overall administration costs of this estate.

19. THP consents to the relief requested in this motion, and as a condition to the Liquidator's requesting the relief sought herein, has agreed to reaffirm the THP Guaranty in all respects.

WHEREFORE, the Liquidator requests the entry of an order (1) finding that an adequate retention for the payment of Claims junior to Class Two exists; (2) authorizing her to commence, immediately upon entry of an order by this Court, the administration, adjudication and payment of Allowed Class Five Claims under the Plan of Liquidation and the Funding and Settlement Agreement; and (3) granting the Liquidator such other and further relief as is just.

Respectfully submitted,

PAULA T. ROGERS, COMMISSIONER  
OF INSURANCE OF THE STATE OF  
NEW HAMPSHIRE, AS LIQUIDATOR  
OF TUFTS HEALTH PLAN OF NEW  
ENGLAND, INC.

By her attorneys,

PHILIP T. MCLAUGHLIN  
ATTORNEY GENERAL

Dated: September \_\_, 2001

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SHEEHAN PHINNEY BASS + GREEN,  
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Dated: September \_\_, 2001

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**VERIFICATION**

I, Paula T. Rogers, Commissioner of Insurance of the State of New Hampshire and the duly appointed Liquidator in the above-captioned Liquidation Proceeding, hereby affirm that the statements of fact contained herein are true and correct to the best of my knowledge, information and belief.

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Paula T. Rogers  
Commissioner of Insurance of the State of New  
Hampshire, as Liquidator of Tufts Health Plan of  
New England

COUNTY OF MERRIMACK  
STATE OF NEW HAMPSHIRE

Sworn and subscribed to before me this \_\_\_\_ day of September, 2001.

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Notary Public/Justice of the Peace  
My Commission Expires:

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of September, 2001, a copy of the foregoing Liquidator's Motion to Accelerate Payment of Class Five Claims, was served upon the parties listed on the attached service list via first class mail, postage prepaid.

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Bruce A. Harwood

## **EXHIBITS**

- Exhibit A: Department of Labor's Proof of Claim
- Exhibit B: TAHMO Summary Financial Information as of June 30, 2001
- Exhibit C: Letter of September 24, 2001, from Linda L. Ruthardt, Commissioner of Insurance of Massachusetts

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